

19 research committee rules governing study committees under the juris-
 20 diction of the research committee shall apply to the study committee
 21 herein created.

1 SEC. 2. The committee established to assist with the study shall
 2 report the study findings and committee recommendations, accom-
 3 panied by bills incorporating such recommendations, to the legislative
 4 research committee prior to December 1, 1968. The research commit-
 5 tee shall report to the sixty-third general assembly in accordance with
 6 section two point fifty (2.50), subsection five (5), of the Code prior
 7 to the convening of the general assembly.

CHAPTER 474

RULE OF CIVIL PROCEDURE AMENDED

H. F. 577

AN ACT to amend rule of civil procedure* one hundred eighty-one point two (181.2) relating to trial assignments.

Be It Enacted by the General Assembly of the State of Iowa:

1 SECTION 1. Rule of Civil Procedure one hundred eighty-one point
 2 two (181.2) is hereby amended by striking from line fifteen (15) of
 3 paragraph (a) the word "petitions" and inserting in lieu thereof the
 4 words "certificates of readiness".

Approved June 8, 1967.

*See also chapter 209, §443.

CHAPTER 475

RULES OF CIVIL PROCEDURE

[See also amendment to Rule 181.2, chapter 474,
 and Rule 56, chapter 209, §443]

IN THE MATTER OF
 THE
 RULES OF CIVIL PROCEDURE

REPORT OF
 THE SUPREME COURT
 OF
 THE STATE OF IOWA

To the Sixty-second General Assembly of the State of Iowa:

1 I.

2 The Supreme Court, on recommendation of its Advisory Commit-
 3 tee on Rules of Civil Procedure, has prescribed and, pursuant to Sec-
 4 tion 684.19, Code of Iowa 1966, reports to you rules and amendments
 5 to existing rules as follows:

6 Rule 237 is revised to read:

7 237. On what claims. Summary judgment may be had under the
 8 following conditions and circumstances:

9 (a) *For claimant.* A party seeking to recover upon a claim, coun-
10 terclaim, or cross-claim or to obtain a declaratory judgment may, at
11 any time after the appearance day or after the filing of a motion for
12 summary judgment by the adverse party, move with or without sup-
13 porting affidavits for a summary judgment in his favor upon all or
14 any part thereof.

15 (b) *For defending party.* A party against whom a claim, coun-
16 terclaim, or cross-claim is asserted or a declaratory judgment is
17 sought may, at any time, move with or without supporting affidavits
18 for a summary judgment in his favor as to all or any part thereof.

19 (c) *Motion and proceedings thereon.* The motion shall be filed
20 at least 10 days before the time fixed for the hearing. The adverse
21 party prior to the day of hearing may file opposing affidavits. The
22 judgment sought shall be rendered forthwith if the pleadings, deposi-
23 tions, answers to interrogatories, and admissions on file, together
24 with the affidavits, if any, show that there is no genuine issue as to
25 any material fact and that the moving party is entitled to a judgment
26 as a matter of law. A summary judgment, interlocutory in char-
27 acter, may be rendered on the issue of liability alone although there
28 is a genuine issue as to the amount of damages.

29 (d) *Case not fully adjudicated on motion.* If on motion under
30 this rule judgment is not rendered upon the whole case or for all the
31 relief asked and a trial is necessary, the court at the hearing of the
32 motion, by examining the pleadings and the evidence before it and
33 by interrogating counsel, shall if practicable ascertain what material
34 facts exist without substantial controversy and what material facts
35 are actually and in good faith controverted. It shall thereupon make
36 an order specifying the facts that appear without substantial con-
37 troversy, including the extent to which the amount of damages or
38 other relief is not in controversy, and directing such further proceed-
39 ings in the action as are just. Upon the trial of the action the facts
40 so specified shall be deemed established, and the trial shall be con-
41 ducted accordingly.

42 (e) *Form of affidavits; Further testimony; Defense required.*
43 Supporting and opposing affidavits shall be made on personal knowl-
44 edge, shall set forth such facts as would be admissible in evidence,
45 and shall show affirmatively that the affiant is competent to testify
46 to the matters stated therein. Sworn or certified copies of all papers
47 or parts thereof referred to in an affidavit shall be attached thereto
48 or filed therewith. The court may permit affidavits to be supple-
49 mented or opposed by depositions, answers to interrogatories, fur-
50 ther affidavits, or oral testimony. When a motion for summary judg-
51 ment is made and supported as provided in this rule, an adverse
52 party may not rest upon the mere allegations or denials of his plead-
53 ing, but his response, by affidavits or as otherwise provided in this
54 rule, must set forth specific facts showing that there is a genuine
55 issue for trial. If he does not so respond, summary judgment, if
56 appropriate, shall be entered against him.

57 (f) *When affidavits are unavailable.* Should it appear from the
58 affidavits of a party opposing the motion that he cannot for reasons

59 stated present by affidavit facts essential to justify his opposition,
60 the court may refuse the application for judgment or may order a
61 continuance to permit affidavits to be obtained or depositions to be
62 taken or discovery to be had or may make such other order as is just.

63 (g) *Affidavits made in bad faith.* Should it appear to the satis-
64 faction of the court at any time that any of the affidavits presented
65 pursuant to this rule are presented in bad faith or solely for the
66 purpose of delay, the court shall forthwith order the party employing
67 them to pay to the other party the amount of the reasonable expenses
68 which the filing of the affidavits caused him to incur, including rea-
69 sonable attorney's fees, and any offending party or attorney may be
70 adjudged guilty of contempt.

71 Rule 238 is revised to read:

72 238. *Procedure.* Motions and affidavits relating to any claim
73 under rule 237 shall be filed and copies delivered as provided in rule
74 82 and hearing shall be had thereon as provided in rule 117.

75 Rule 240. *Procedure.*

76 Rule 240 is amended by striking from line three (3) the figure
77 "238" and inserting in lieu thereof the figure "237".

78 Rule 117. *Motion day—disposition of motions.*

79 Rule 117(d) is amended by inserting at the end thereof the words
80 "and objections to interrogatories".

81 Rule 270. *The action—pending probate.*

82 Rule 270 is amended by striking from lines seven (7) and eight
83 (8) the words "the notice of the administrator's appointment" and
84 inserting in lieu thereof the words "the second publication of the
85 notice of the appointment of the personal representative".

86 Rule 260. *Levy on personalty.*

87 Rule 260(b) is revised to read:

88 (b) If the creditor or his agent first so requests in writing, the
89 officer may view the property, inventory its exact description at
90 length, and append such inventory to the execution, with his signed
91 statement of the number and title of the case, the amount claimed
92 under the execution, the exact location of the property and in whose
93 possession and the last known address of the judgment debtor; and,
94 if the property is equipment used in farming operations or farm
95 products or consumer goods or if the judgment debtor is not a resi-
96 dent of this state, file with the County Recorder of the county where
97 the property is located his certified transcript of such inventory and
98 statement; and, in all other cases, file with the Secretary of State his
99 certified transcript of such inventory and statement. Such filing shall
100 be accepted by the County Recorder or the Secretary of State as a
101 financing statement and shall be marked, indexed and certified in the
102 same manner, and shall be constructive notice of the levy to all per-
103 sons. Whenever the writ is satisfied or the levy discharged the officer

104 shall file a termination statement with the County Recorder or Sec-
105 retary of State. The fees normally charged by the County Recorder
106 or Secretary of State for the filing of a financing statement and the
107 filing of a termination statement shall be paid by the officer and shall
108 be taxed by him as a part of his costs of the levy.

109 Rule 7 is revised to read:

110 **7. Assignees—exception.** In cases not governed by the Uniform
111 Commercial Code the assignment of a thing in action shall be without
112 prejudice to any defense, counterclaim or cause of action matured or
113 not, if matured when pleaded, existing against the assignor in favor
114 of the party pleading it.

115 **Rule 216. Involuntary dismissal.**

116 Rule 216 is amended by inserting after the word “him” in line
117 three (3) the words “or for any appropriate order of court”.

118 Rule 121 is revised to read:

119 **121. Interrogatories—time—nature.** In actions other than ac-
120 tions in Justice Court or Class B actions in Municipal Court, and
121 after the general appearance of an adversary, any party may file in
122 duplicate not over 30 numbered interrogatories to be answered by
123 such party’s adversary. After a special appearance, any party may
124 file in duplicate not over 30 numbered interrogatories directed only
125 to the issues raised on such special appearance to be answered by the
126 party’s adversary. Subject only to the limitations with reference to
127 interrogatories directed to issues raised on a special appearance,
128 interrogatories may relate to matters which can be inquired into
129 under rule 143 and the answers may be used to the same extent as
130 provided in rules 144 and 145 for the use of the deposition of a party.

131 **Rule 199. Separation and deliberation of jury.**

132 Rule 199(b) is revised to read:

133 (b) On final submission, the jury shall retire for deliberation, and
134 be kept together in charge of an officer until they agree on a verdict
135 or are discharged by the court, unless the court permits the jurors to
136 separate temporarily overnight, on weekends or holidays, or in emer-
137 gencies. During their deliberations, the officer in charge must not
138 suffer any communication to be made to them, nor make any himself,
139 except to ask them if they have agreed on a verdict, unless by order
140 of court; nor communicate to any person the state of their delibera-
141 tions, or the verdict agreed upon before it is rendered.

142 Rule 366 is revised to read:

143 **366. Computing time—holidays.** In computing time under these
144 rules the provisions of Code section 4.1 subsection 23 shall govern.

145 **II.**

146 The Legislative Court Study Commission in Part I of its report
147 dealing with Court Structure has recommended the creation of a uni-
148 fied trial court. The report recommends, as an essential adjunct to

149 such unification, a simplified procedure for the enforcement of small
150 claims. The legislature must act on certain recommended bills before
151 a unified court can be established. However, the rules of procedure
152 for a small claims action are the proper subjects of the rule making
153 authority of the supreme court. The commission has set out, com-
154 mencing on page 16 in Part I of its report, the small claims rules and
155 has submitted them to the supreme court for action.

156 Section 684.19 of the 1966 Code of Iowa requires the supreme court
157 to report any rules or forms which it may prescribe to the General
158 Assembly within 20 days after the commencement of the regular
159 session. While it is highly unlikely the legislature will have com-
160 pleted action on this important proposition within that time, it is
161 essential that the small claims rules be effective if the legislature
162 does act favorably on the proposition of the unified court during this
163 session. Without expressing approval or disapproval of any of the
164 report of the Legislative Court Study Commission, the supreme court
165 has prescribed rules for the enforcement of small claims to be effec-
166 tive in the event the Sixty-second General Assembly in regular ses-
167 sion adopts legislation creating a unified trial court system. Pur-
168 suant to Section 684.19 Code of Iowa 1966 these rules, intended to
169 constitute an additional division to the existing Rules of Civil Pro-
170 cedure, are reported to you as follows:

171 DIVISION XX

172 SMALL CLAIMS PROCEDURE: Rules 373 to 383, inclusive, shall take
173 effect January 1, 1969.**

174 **Rule 373. Commencement, docket.** Civil actions in which the
175 amount in controversy in money or value is less than \$300, exclusive
176 of interest and costs, shall be known as small claims. All such actions
177 shall be commenced by the filing of an original notice with the clerk
178 and by the mailing by the clerk of a copy of same to each defendant
179 at his last known address, as stated in the original notice, by re-
180 stricted, certified mail, return receipt to the clerk requested. Instead
181 of such mailing, the plaintiff may, after filing the original notice with
182 the clerk, cause a copy of same to be served on all or some defendants
183 in the manner provided in Division III of these rules, whereupon
184 rules 48 and 49 shall be applicable as to the defendants to be so
185 served. The clerk shall maintain a book known as the small claims
186 docket, which shall contain as to small claims the matters contained
187 in the combination docket as to the regular civil actions.

188 **Rule 374. Original notice.** The original notice must be mailed or
189 otherwise served not less than 10 nor more than 20 days prior to the
190 hearing date. The original notice and copies shall be signed by the
191 plaintiff, either in person or by attorney, and shall be in substantially
192 the following form:

**See certificate hereunder.

193 IN THE DISTRICT COURT OF IOWA
 194 IN AND FOR COUNTY

195	Plaintiff(s)	} SMALL CLAIM NO.
196	Address of each plaintiff	
197	vs.	
198	Defendant(s)	
199	Address of each defendant	

200 ORIGINAL NOTICE

201 To the above named defendant(s) :

202 YOU ARE HEREBY NOTIFIED that the above named plaintiff(s)
 203 demands of you

(1. If demand is for money, state amount; 2. If demand is for
 204 something else, state briefly what is demanded and its value in money; 3. If both
 205 money and something else are demanded, state both 1 and 2)
 206 based on

(state briefly the basis for the demand)

207 and that unless you appear and defend before the above named court
 208 at* in*, Iowa, at*
 (Place) (City or Town)

209 o'clock* M. on the* day of*,
 210 19.....* judgment will be rendered against you for the relief de-
 211 manded, together with interest and court costs.

212 *To be completed by Clerk of District Court

213
 Plaintiff(s)

214 **Rule 375. Function of Clerk.** The clerk shall furnish forms of
 215 original notice. At the time of filing, the clerk shall enter on the
 216 original notice and the copies to be served the file number and the
 217 time and place of hearing, which shall be a time when small claims
 218 are scheduled to be heard not less than 10 nor more than 20 days
 219 after the date on which the notice will be mailed or otherwise served.
 220 The clerk shall mail a copy of the original notice to each defendant
 221 by restricted, certified mail, return receipt to the clerk requested,
 222 except for defendants whom the plaintiff wishes to serve under Divi-
 223 sion III of these rules. The clerk shall advise plaintiff of the time
 224 and place fixed for the hearing.

225 **Rule 376. Fees, costs.** Fees and costs shall be one-half of fees
 226 and costs in regular civil actions in district court.

227 **Rule 377. Pleadings.** Except as provided in rules 374 and 378,
 228 there shall be no written pleadings or motions unless the court in the
 229 interest of justice requires them, in which event they shall be similar
 230 in form to the original notice.

231 **Rule 378. Joinder, counterclaim, cross-claim, intervention.**

232 (a) Division II of these rules and rule 75 shall be applicable to
233 small claims actions, except that rule 29 shall not apply to actions
234 originating as small claims actions.

235 (b) In small claims actions, if a party joins a small claim with one
236 which is not a small claim, the court shall (1) order the small claim
237 to be heard under this division and dismiss the other claim without
238 prejudice, or (2) as to parties who have appeared or are existing
239 parties, either (a) order the small claim to be heard under this divi-
240 sion and the other claim to be tried by regular procedure or (b)
241 order both claims to be tried by regular procedure.

242 (c) In small claims actions, a counterclaim, cross-claim or inter-
243 vention in the amount of a small claim shall be in writing and similar
244 in form to the original notice, and shall be entitled Original Notice
245 of Counterclaim, of Cross-Claim, or of Intervention, as the case may
246 be. A copy shall be filed for each existing party. New parties may
247 be brought in without order and shall be served with notice as pro-
248 vided in rules 373 and 374; and if notice is to be served by mail the
249 clerk shall collect the cost of mailing before filing the pleading. The
250 clerk shall furnish forms of such pleadings. No counterclaim is
251 necessary to assert an offset arising out of the subject of the plain-
252 tiff's claim.

253 (d) In small claims actions, a counterclaim, cross-claim or inter-
254 vention in a greater amount than that of a small claim shall be in the
255 form of a regular pleading. A copy shall be filed for each existing
256 party. New parties, when permitted by order, may be brought in
257 under rule 34 and shall be given notice under Division III of these
258 rules. The court shall either (1) order such counterclaim, cross-
259 claim, or intervention to be tried by regular procedure and the other
260 claim to be heard under this division, or (2) order the entire action
261 to be tried by regular procedure.

262 (e) In regular actions, when a party joins a small claim with one
263 which is not a small claim, regular procedure shall apply to both
264 unless the court transfers the small claim to the small claims docket
265 for hearing under this division.

266 (f) In regular actions, a counterclaim, cross-claim, or intervention
267 in the amount of a small claim shall be pleaded, tried, and determined
268 by regular procedure, unless the court transfers such small claim to
269 the small claims docket for hearing under this division.

270 (g) Pleadings which are not in correct form under this rule shall
271 be ordered amended so as to be in correct form; but a small claim
272 which is proceeding under this division need not be amended although
273 in the form of a regular pleading.

274 (h) Copies of any papers filed by the parties which are not re-
275 quired to be served, shall be mailed or delivered by the clerk as pro-
276 vided in rule 82.

277 **Rule 379. Proof of service.** At the time for hearing the court or
278 clerk shall first determine that proper notice has been given a party
279 before proceeding further as to him, unless he has appeared or is an
280 existing party, and also that the action is properly brought as a small
281 claim.

282 **Rule 380. Default.** Unless good cause to the contrary appears,
283 (1) if the parties fail to appear at the time of hearing the claim shall
284 be dismissed without prejudice by the court or clerk; (2) if the plain-
285 tiff fails to appear but the defendant appears, the claim shall be dis-
286 missed with prejudice by the court or clerk; and (3) if the plaintiff
287 appears but the defendant fails to appear, judgment shall be ren-
288 dered against the defendant by the court, or by the clerk if the relief
289 to be granted is readily ascertainable. The filing by the plaintiff of
290 a verified account, or an instrument in writing for the payment of
291 money with an affidavit the same is genuine, shall constitute an
292 appearance by plaintiff for the purpose of this rule. At the request
293 of either party, the court shall grant such party one continuance to
294 a day certain.

295 **Rule 381. Hearing.** The time for appearance shall be the time
296 for hearing, unless a continuance has been granted under Rule 380.
297 The hearing shall be to the court, shall be simple and informal, and
298 shall be conducted by the court itself, without regard to technicalities
299 of procedure; but the decision must be based on substantial evidence.
300 The court shall swear the parties and their witnesses, and examine
301 them in such way as to bring out the truth. The parties may partici-
302 pate, either personally or by attorney. The court may continue the
303 hearing from time to time if justice requires. The proceedings shall
304 not be reported unless a party provides a reporter at his own expense
305 or the parties by agreement cause the proceedings to be electronically
306 reported, but there shall be no delay for such purpose.

307 **Rule 382. Judgment, minutes.**

308 (a) The judgment shall be entered in a space on the original
309 notice first filed, and the clerk shall immediately enter the judgment
310 in the small claims docket and district court lien book, without re-
311 cording. Such relief shall be granted as is appropriate. The court
312 may enter judgment for installment payments to be made directly
313 by the party obligated to the party entitled thereto; and in such
314 event execution shall not issue as long as such payments are made
315 but execution shall issue for the full unpaid balance of the judgment
316 upon the filing of an affidavit of default. When entered on the small
317 claims docket and district court lien book, a small claims judgment
318 shall constitute a lien to the same extent as regular judgments en-
319 tered on the district court judgment docket and lien book; but if a
320 small claims judgment requires installment payments, it shall not
321 be enforceable until an affidavit of default is filed, whereupon it shall
322 constitute a lien for the full unpaid balance of the judgment.

323 (b) Unless the hearing is reported, minutes of the testimony of
324 each witness and of any stipulations of the parties shall likewise be
325 entered on the original notice first filed; and the exhibits or copies

326 thereof shall be attached to such original notice or be filed, until
327 released by the court.

328 **Rule 383. Other statutes and rules.** Small claims shall be com-
329 menced, heard, and determined in district court in accordance with
330 this division, but this division shall only be applicable to district
331 court. Other statutes and rules relating to civil proceedings shall
332 apply, but only insofar as not inconsistent with this division. Small
333 claims on file for 90 days and not determined shall be dismissed with-
334 out prejudice unless prior thereto a party secures an order of con-
335 tinuance to a date certain after notice and hearing, upon a ground
336 stated in rule 215.1. Contested claims in an amount of a small claim
337 may be heard and determined under this division and actions there-
338 for may be commenced hereunder; if commenced as a regular civil
339 action or under the statutes relating to probate proceedings, they
340 shall be transferred to the small claims docket and proceed accord-
341 ingly. Civil actions coming within this division but commenced as a
342 regular action shall not be dismissed but shall be transferred to the
343 small claims docket and proceed accordingly. Civil and probate
344 actions not coming within this division but commenced hereunder
345 shall be dismissed without prejudice except for defendants who have
346 appeared, as to whom such actions shall be transferred to the com-
347 bination or probate docket, as appropriate and proceed accordingly.

348 If the Sixty-second General Assembly fails to create a unified trial
349 court system, the "small claims" rules appearing in this part II of the
350 report to you shall be void and of no effect.*

351 Respectfully submitted,
352 THE SUPREME COURT OF IOWA
353 /s/ T. G. Garfield
354 CHIEF JUSTICE

355 Des Moines, Iowa
356 January 26th, 1967

357 ACKNOWLEDGEMENTS

358 I, Al Meacham, Secretary of the Senate of the State of Iowa, here-
359 by acknowledge delivery to me on the 26th day of January, 1967 of
360 the foregoing report of the Supreme Court of Iowa pertaining to the
361 Rules of Civil Procedure.

362 s/ AL MEACHAM
363 Secretary of the Senate
364 Sixty-second General Assembly
365 of the State of Iowa

366 I, William R. Kendrick, Chief Clerk of the House of Representa-
367 tives of the State of Iowa, hereby acknowledge delivery to me on the

*See certificate hereunder.

368 26th day of January, 1967 of the foregoing report of the Supreme
369 Court of Iowa pertaining to the Rules of Civil Procedure.

370 s/ WM. R. KENDRICK
371 Chief Clerk of the House
372 of Representatives
373 Sixty-second General Assembly
374 of the State of Iowa

375 CERTIFICATE

376 I, Robert D. Fulton, do hereby certify that I am the President of
377 the Senate of the Sixty-second General Assembly of the State of
378 Iowa; and I, Al Meacham, do hereby certify that I am the Secretary
379 of the Senate of the Sixty-second General Assembly of the State of
380 Iowa, and we do hereby jointly certify that as such President and
381 Secretary that on the 26th day of January, 1967, the Supreme Court
382 of the State of Iowa reported to said Senate, and filed with it, the
383 attached and foregoing modifications, amendments, revisions and
384 additions to the Rules of Civil Procedure, heretofore reported by
385 said Supreme Court to the Sixty-second General Assembly of the
386 State of Iowa;

387 THAT the date of making said report to the Sixty-second General
388 Assembly was within the twenty days subsequent to the convening
389 of the regular session of the Sixty-second General Assembly;

390 THAT no other report pertaining to the Rules of Civil Procedure
391 was made or filed by said Supreme Court with said Senate;

392 THAT no other or different changes, modifications, amendments,
393 revisions or additions to the Rules of Civil Procedure were made or
394 enacted at such regular session of said Sixty-second General Assem-
395 bly;

396 THAT no legislation was enacted providing for a unified trial court
397 system at such regular session of said Sixty-second General Assem-
398 bly.

399 Signed this 2nd day of July, 1967, being the last legislative day of
400 the Sixty-second General Assembly.

401 s/ ROBERT D. FULTON
402 President of the Senate

403 s/ AL MEACHAM
404 Secretary of the Senate

405

CERTIFICATE

406 I, Maurice E. Baringer, do hereby certify that I am the Speaker of
407 the House of Representatives of the Sixty-second General Assembly
408 of the State of Iowa; and I, William R. Kendrick, do hereby certify
409 that I am the Chief Clerk of the House of Representatives of the
410 Sixty-second General Assembly of the State of Iowa, and we do here-
411 by jointly certify that as such Speaker and Chief Clerk that on the
412 26th day of January, 1967, the Supreme Court of the State of Iowa
413 reported to said House of Representatives, and filed with it, the at-
414 tached and foregoing modifications, amendments, revisions and addi-
415 tions to the Rules of Civil Procedure, heretofore reported by said
416 Supreme Court to the Sixty-second General Assembly of the State
417 of Iowa;

418 THAT the date of making said report to the Sixty-second General
419 Assembly was within the twenty days subsequent to the convening
420 of the regular session of the Sixty-second General Assembly;

421 THAT no other report pertaining to the Rules of Civil Procedure
422 was made or filed by said Supreme Court with said House of Repre-
423 sentatives;

424 THAT no other or different changes, modifications, amendments,
425 revisions or additions to the Rules of Civil Procedure were made or
426 enacted at such regular session of said Sixty-second General Assem-
427 bly;

428 THAT no legislation was enacted providing for a unified trial court
429 system at such regular session of said Sixty-second General Assem-
430 bly.

431 Signed this 2nd day of July, 1967, being the last legislative day of
432 the Sixty-second General Assembly.

433

s/ MAURICE E. BARINGER
Speaker of the House

434

435

s/ WM. R. KENDRICK
Chief Clerk

436